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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,397	08/06/2002	Mark W. Miles	5652P013XCD	6992

7590 01/05/2004  
James H. Salter  
Blakely, Sokoloff, Taylor & Zafman LLP  
12400 Wilshire Boulevard, Seventh Floor  
Los Angeles, CA 90025

EXAMINER

MAI, HUY KIM

ART UNIT PAPER NUMBER

2873

DATE MAILED: 01/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/082,397

Applicant(s)

MILES, MARK W.

Examiner

Huy K. Mai

Art Unit

2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 60-71 is/are pending in the application.
- 4a) Of the above claim(s) 60-67 and 70 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 68, 69 and 71 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2002 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2/02, 7/03 & 11/03 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election of Species B, claims 68-69,71 in Paper No. 1103 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. NOTE: There is a mistake in the previous restriction requirement in the statement "Currently, claims 60 is generic". That statement should read -- *Currently, claims 60 is generic to SPECIES A and C, but not Species B--*. Therefore, the previous restriction requirement is modified as below. Although the election has been treated as an election without traverse, the requirement still open for discussion the generic claim if the applicant want to.

### *"Restriction Requirement*

*This application contains claims directed to the following patentably distinct species of the claimed invention:*

*A. Claim 66-67, drawn to a display comprising an internal element encapsulated by an encapsulation membrane;*

*B. Claims 68-69,71, drawn to an interferometric modulator a sandwich of two or more layers, at least one of the layers being stressed;*

*C. Claim 70, drawn to an apparatus comprising an array of interferometric modulators having one of the walls of the modulator being movable relative to the other to define response mode.*

*Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 60 is*

*generic to SPECIES A and C, but not Species B. Claims 61-65 are not restricted, but will be examined together with the generic claim."*

Claims 60-67 and 70 are withdrawn from consideration as being directed to a nonelected species. (See 37 CFR 1.142(b) and MPEP 821.03.) Therefore claims 68-69,71 will be examined as follows:

***Information Disclosure Statement***

3. The Information Disclosure Statements filed on Feb. 25, 2002, Jul. 03 and Nov. 11, 2003 are acknowledged.

***Oath/Declaration***

4. The declaration filed on Dec. 02, 2002 is acceptable.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the

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reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 69 and 71 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Nelson (5,212,582).

The limitations in claims 69 and 71 are shown in Nelson's Figs. 2-4, 10, column 3, line 62 through column 7, line 58. Nelson discloses a device comprising a sandwich of two or more layers, each of layers comprising one or more components 16,30,40 which respectively serve specific functions including electrical, mechanical, and optical.

Regards claim 71, Nelson discloses the movable layer including a deposited stiffener 32,62 to cause the movable layer to remain parallel to another of the layer during operation.

7. Claim 68 is rejected under 35 U.S.C. 102(e) as being clearly anticipated by Li et al (5,619,059).

The limitations in claim 68 are shown in Li et al's Fig.1,7E column 5, lines 40-65. Li et al discloses a device comprising at least two or more layers 14,16, at least one of the layers comprising two or more films 18,20,22,32, the stress of each film being arranged so that the overall stress of the layer ranges from zero to tensile in magnitude.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huy Mai whose telephone number is (703) 308-4874. The examiner can normally be reached on M-F (8:00 a.m.-4:30 p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Y. Epps can be reached on (703) 308-4883. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

A handwritten signature in black ink, appearing to read "Huy Mai". The signature is fluid and cursive, with the first name "Huy" and last name "Mai" clearly distinguishable.

Huy Mai  
Primary Examiner  
Art Unit 2873

HKM/  
December 29, 2003